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*In pro per*

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

HOWARD HERSHIPS,  
Plaintiff,

vs.

THE SUPERIOR COURT OF CALIFORNIA  
COUNTY OF CALIFORNIA, *et al.*,

Defendants.

Case No.: C 06-CV-6644 MJJ

**MOTION TO DISMISS OR, IN THE  
ALTERNATIVE, STAY FIRST  
AMENDED COMPLAINT AGAINST  
STEVEN T. KIRSCH UNDER F.R.C.P.  
12(b)(6)**

Date of Motion: August 28, 2007  
Time of Motion: 9:30 a.m.  
Ctroom: 11, 19<sup>th</sup> Floor  
Judge: The Hon. Martin J. Jenkins

NOTICE IS HEREBY GIVEN that on August 28, 2007 at 9:30 a.m. or as soon thereafter as  
counsel and Steven T. Kirsch may be heard by the above-entitled Court, located at 450 Golden  
Gate Ave., San Francisco, CA, 94102, in the courtroom of The Hon. Martin J. Jenkins, defendant

1 Steven T. Kirsch, *in pro per* and through undersigned counsel, will and hereby does move to  
 2 dismiss the First Amended Complaint filed by Howard Hershops against him under Federal Rule of  
 3 Civil Procedure 12(b)(6) or, in the alternative, dismiss or stay the action under the *Younger*  
 4 abstention doctrine for all of the reasons set forth in the papers filed by co-defendants Maxmilian  
 5 Zarzana and Pinaki Chakravorty, whose motions Kirsch joins in.

6 This motion is brought on the grounds that this action should be dismissed or stayed under  
 7 the *Younger* abstention doctrine for all of the reasons set forth in the papers filed by Zarzana and  
 8 Chakravorty. For these reasons, Kirsch seeks to dismiss the First Amended Complaint with  
 9 prejudice or, in the alternative, that it be stayed.

10 This motion is based on this Notice of Motion and Motion, the Memorandum of Points and  
 11 Authorities set forth herein, the pleadings and papers filed herein, all papers relating to the motions  
 12 filed by Zarzana and Chakravorty, and upon such other matters as may be presented to the Court at  
 13 the time of the hearing.

#### 14 **I. ISSUES TO BE DECIDED IN MOTION TO DISMISS**

15 Is application of the *Younger* abstention doctrine appropriate to require dismissal or stay of  
 16 the instant action against Kirsch for the reasons set forth in the papers of Zarzana and  
 17 Chakravorty?

#### 18 **II. RELEVANT FACTS**

##### 19 **A. Allegations in the First Amended Complaint**

20 Plaintiff filed his First Amended Complaint for Declaratory and Injunctive Relief on April  
 21 9, 2007. Plaintiff does not seek relief under his first claim against Kirsch. By his second claim,  
 22 plaintiff appears to allege that Kirsch presented an improper criminal complaint against him so that  
 23 Kirsch could further his chances of collecting a civil judgment. By his third claim, plaintiff  
 24 appears to allege that the defendants engaged in a conspiracy to deprive him of his rights so that  
 25 Kirsch could further his chances of collecting a civil judgment.

#### 26 **III. LEGAL ARGUMENT**

##### 27 **A. The *Younger* Abstention Doctrine Mandates Stay or Dismissal**

28 For all the reasons set forth in the papers of co-defendants Zarzana and

1 Chakravorty, the *Younger* abstention doctrine mandates stay or dismissal.

2 **IV. CONCLUSION**

3 For all the reasons set forth above, Kirsch requests that this action against him be dismissed  
4 with prejudice or, in the alternative, stayed.

5 Date: July 2, 2007

REDENBACHER & BROWN, LLP

7 By                   /s/                    
8 JOHN C. BROWN  
9 Attorneys for Plaintiff  
STEVEN T. KIRSCH